

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual; and
VIA VIEW, INC., a corporation.
Plaintiffs,

v.

CASE NO. 5:14-cv-01059-BLF

THOMAS RETZLAFF, an individual;
NEAL RAUHAUSER, an individual;
LANE LIPTON, an individual;
and DOES 1-5, individuals whose true
names are not known,
Defendants.

Hearing Date: November, 13, 2014
Hearing Time: 9:00 am
Courtroom: 3

**DEFENDANT RETZLAFF'S MEMORANDUM IN SUPPORT OF
MOTION TO QUASH SERVICE OF PROCESS**

Defendant files this motion to quash service of process for insufficient process, as authorized by Federal Rule of Civil Procedure 12(b)(4).

A. INTRODUCTION

1. Plaintiffs are James McGibney and ViaView, Inc.; defendants are Thomas Retzlaff, Neal Rauhauser, Lane Lipton, and Does 1-5.
2. Plaintiffs sued defendants for (1) Tortious Interference with Contractual Relations; (2) Tortious Interference with Prospective Economic Advantage; (3) Intentional Infliction of Emotional Distress; (4) Defamation; (5) Public Disclosure / Invasion Of Privacy in the Northern District of California, San Jose Division.

3. The form of the summons is defective; therefore, the Court should dismiss the suit and/or quash the service of process.

B. ARGUMENT

4. When process is defective, a court may dismiss the suit or quash the service of process. *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 886 (8th Cir. 1996).

5. In this case, the Court should dismiss the suit and/or quash the service of process because no summons was ever attached to the pleadings. All that defendant ever received was just a copy of plaintiffs' amended complaint and nothing more. No information on when an Answer was due or which court or court clerk to contact. Nothing.

6. Defendant was prejudiced by the defect in process. Because no Answer date was included in these papers, defendant cannot properly calculate when his response is due.

C. CONCLUSION

7. Because the form of the summons is defective, the Court should dismiss the suit and/or quash the service of process.

Respectfully submitted,

/s/ Thomas Retzlaff
Thomas Retzlaff
PO Box 46424
Phoenix, AZ 85063-6424

Defendant, pro se

CERTIFICATE OF SERVICE

I certify that on August 5, 2014, a copy of this document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorney in charge for plaintiffs ViaView & James McGibney:

Jason Scott Leiderman, of 5740 Ralston Street Ste 300, Ventura, CA 93003, Email:
Jay@Criminal-Lawyer.me.

I certify that Jay Leiderman is a registered CM/ECF user and that service will be accomplished by the CM/ECF system.

I certify that on August 5, 2014, a copy of this document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorney in charge for defendant Lane Lipton:

Clark Anthony Braunstein, of 11755 Wilshire Boulevard, Suite 2140, Los Angeles, CA 90025, Email: Clarkbraunstein@gmail.com.

I certify that Clark Anthony Braunstein is a registered CM/ECF user and that service will be accomplished by the CM/ECF system.

/s/ Thomas Retzlaff
Thomas Retzlaff

Defendant, pro se

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Defendants.

**DECLARATION OF THOMAS RETZLAFF IN SUPPORT OF HIS
MOTION TO QUASH SERVICE**

I, Thomas Retzlaff, declare as follows:

1. I am the defendant in this case. I have personal knowledge of the matters stated herein and, if called as a witness, I could and would testify competently thereto.
2. This Declaration is submitted in support of my motion to quash service.
3. I never was given a copy of the summons or citation in this lawsuit. The only thing I found on the ground outside the front door was a copy of plaintiffs' amended complaint filed in this case. No summons. Nothing to tell me when my Answer was due, nor in which court or court clerk to file it.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED this 5th day of August, 2014, at Phoenix, AZ.

X 

Thomas Retzlaff